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Attorneys for Reorganized Debtor
IMAGENETIX, INC.

UNITED STATES BANKRUPTCY COURT

Southern District of California

IMAGENETIX, INC., a Nevada corporation, Debtor.	Case No. 12-16423 MM11 Chapter 11
FIRST FRUITS BUSINESS MINISTRY LLC, a South Carolina Corporation, FIRST FRUITS BEVERAGE COMPANY LLC, a South Carolina Corporation and ROGER J. CATARINO, an individual, Plaintiffs, v. IMAGENETIX, INC., a Nevada corporation, Defendant.	Adv. No. 16-90121-MM **IMAGENETIX, INC.'S ANSWER ADVERSARY COMPLAINT WITH AFFIRMATIVE DEFENSES** Dept: 1 Judge: Hon. Margaret M. Mann

Defendant Imagenetix, Inc. ("Imagenetix"), for itself, answers the Adversary Complaint ("Complaint") of Plaintiffs First Fruits Business Ministry LLC ("First Fruits"), First Fruits Beverage Company LLC ("FFBC"), and Roger J. Catarino ("Catarino," collectively with First Fruits and FFBC, "Plaintiffs") as follows:

NATURE OF THE ACTION

1. Imagenetix admits the allegations in paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. Imagenetix admits the allegations in paragraphs 2 through 4 of the Complaint.

THE PARTIES AND RELATED ENTITIES

3. Imagenetix admits the allegations in paragraphs 5 through 8.

BACKGROUND

4. As to the allegations in paragraph 9, Imagenetix states that the Exclusive Patent License Agreement ("EPLA") dated September 5, 2005, by and between Imagenetix and the University of Minnesota, attached as Exhibit A to the Complaint, speaks for itself, and, therefore, Imagenetix denies the allegations in paragraph 9 of the Complaint.

5. As to the allegations in paragraph 10, Imagenetix states that the Amended and Restated Exclusive Marketing and Supply Agreement ("AEMA") dated October 1, 2007, by and between Imagenetix and TriPharma, LLC ("TriPharma") (Bankruptcy Dkt. No. 557-2), speaks for itself and, therefore, Imagenetix denies the allegations in paragraph 10 of the Complaint.

6. Imagenetix admits that it provided TriPharma notice of termination of the AEMA on June 3, 2010, and denies any other allegation within paragraph 11 of the Complaint.

7. Imagenetix admits that First Fruits entered into a Patent License Agreement with TriPharma on August 23, 2010, but lacks sufficient information to form a belief as to the allegations in paragraphs 12 through 14 of the Complaint.

8. As to paragraphs 15 and 16, Imagenetix states that the Agreement for Assignment of Patent and Other Property purportedly executed on March 4, 2011, by and between Imagenetix and First Fruits, as amended by the First Amendment to Agreement for Assignment of Patent and Other Property purportedly executed on May 24, 2011, collectively attached to the Complaint as Exhibit B ("AAPO"), speaks for themselves and, therefore, Imagenetix denies the allegations in paragraphs 15 and 16 of the Complaint.

9. Imagenetix admits that it and TriPharma were parties to an arbitration proceeding entitled *Imagenetix, Inc. v. Tripharma, LLC, et al.*, JAMS Arbitration Case No 1240020032 ("Arbitration") regarding claims by and between the parties relating to the AEMA and denies the remaining allegations within paragraph 17 of the Complaint.

10. Imagenetix admits that TriPharma prevailed in the Arbitration and that on November 2, 2011, the arbiter ordered the reinstatement of the AEMA and confirmed that TriPharma held an exclusive sublicense to market, sell, and distribute any and all products covered by the 892 Patent and to exclusively market and sell the Product by referencing the 892 Patent and the UConn clinical study, to the exclusion of all others (Bankruptcy Dkt. No. 226-1, pp. 7-46). Imagenetix denies the remaining allegations in paragraph 18 of the Complaint.

11. Imagenetix admits that paragraph 1.B of the AAPO states that any assignment of the 892 Patent to First Fruits would be subject to the outcome of the Arbitration, in which TriPharma claims certain rights to the 892 Patent. Imagenetix further admits that the United States District Court, Central District of California, in *TriPharma v. First Fruits, LLC, et al.*, Case No. SACV12-00404-NS (Ame) ("District Court"), issued a temporary injunction enjoining First Fruits from the sale, distribution, or advertising of any 892 Patent product until at least October 1, 2014.

12. Imagenetix admits that on December 17, 2012, it filed a voluntary petition under Chapter 11 in the United States Bankruptcy Court for the Southern

District of California. Imagenetix denies the remaining allegations in paragraph 20 of the Complaint.

13. As to paragraph 21, Imagenetix states that the Settlement and Release Agreement and the further amendment to the AEMA each dated August 29, 2013, by and between Imagenetix and TriPharma (Bankruptcy Dkt. No. 243) as approved by this Court by order entered on November 5, 2013 (Bankruptcy Dkt. No. 271), speak for themselves, and, therefore, Imagenetix denies the allegations in paragraph 21 of the Complaint.

14. Imagenetix admits that on October 30, 2014, TriPharma filed in the District Court an Ex Parte Application for an Order Extending Permanent Injunction as to Plaintiffs and others ("Ex Parte Application") under Case No. SACV12-00404-NS, and is without sufficient information or knowledge to form a belief as to the truth of the allegations in paragraph 22 of the Complaint.

15. As to paragraph 23, Imagenetix states that the order, attached as Exhibit D to the Complaint, entered by the District Court in connection with the hearing on the Ex Parte Application speaks for itself, and, therefore, Imagenetix denies the allegations in paragraph 23 of the Complaint.

16. Imagenetix denies the allegations in paragraphs 24 through 26.

COUNT ONE - FRAUDULENT CONVEYANCE [11 U.S. Code § 548]

(By ALL Plaintiffs against ALL Defendants [sic])

17. As to paragraph 27 of the Complaint, Imagenetix incorporates its responses to paragraphs 1 through 26 of the Complaint as though fully set forth herein.

18. Imagenetix admits that on December 17, 2012, it filed a Chapter 11 petition with this Court. Imagenetix denies the remaining allegations in paragraph 28 of the Complaint.

19. With respect to paragraph 29, Imagenetix states that the Settlement and Release Agreement and the further amendment to the AEMA each dated

August 29, 2013, by and between Imagenetix and TriPharma (Bankruptcy Dkt. No. 243) as approved by this Court by order entered on November 5, 2013 (Bankruptcy Dkt. No. 271), speak for themselves, and, therefore, Imagenetix denies the allegations in paragraph 29 of the Complaint.

20. Imagenetix denies the allegations in paragraph 30 through 34 of the Complaint.

COUNT TWO -DECLARATORY RELIEF

(By ALL Plaintiffs against ALL Defendants [sic])

21. As to paragraph 35 of the Complaint, Imagenetix incorporates its responses to paragraphs 1 through 34 of the Complaint as though fully set forth herein.

22. As to paragraph 36, Imagenetix has insufficient knowledge or information on which to form a belief as to what the Plaintiffs believe, and on that basis denies the allegation.

23. Imagenetix denies the allegations in paragraph 37 of the Complaint.

24. As to paragraph 38, Imagenetix admits that it disputes the Plaintiffs' contentions as set forth in the Complaint.

25. As to paragraphs 39 and 40, Imagenetix admits that the Plaintiffs have requested this relief but deny that the Plaintiffs are entitled to such relief.

COUNT THREE -INJUNCTIVE RELIEF

(By ALL Plaintiffs against ALL Defendants [sic])

26. As to paragraph 41 of the Complaint, Imagenetix incorporates its responses to paragraphs 1 through 40 of the Complaint as though fully set forth herein.

27. Imagenetix denies the allegations set forth in paragraphs 42 and 43 and denies that the Plaintiffs are entitled to relief requested therein.

AND FOR SEPARATE AND AFFIRMATIVE DEFENSES TO THE COMPLAINT AND TO EACH CAUSE OF ACTION CONTAINED THEREIN, IMAGENETIX AVERS AS FOLLOWS:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

28. Imagenetix is informed and believes, and based thereon alleges, that the alleged causes of action fail to state facts sufficient to constitute causes of action against Imagenetix.

SECOND AFFIRMATIVE DEFENSE

(Bad Faith)

29. Imagenetix is informed and believes, and based thereon alleges, that Plaintiffs engaged in conduct and activities by reason of which they are estopped from asserting any claims, damages, or seeking relief against Imagenetix.

THIRD AFFIRMATIVE DEFENSE

(Res Judicata)

30. Imagenetix is informed and believes, and based thereon alleges, that the Plaintiffs' Complaint, and each alleged cause of action therein, are barred by the doctrine of res judicata as the result of the Plaintiffs' actions (or lack thereof) in connection with (i) the approval of the Settlement and Release Agreement and the further amendment to the AEMA by this Court (Bankruptcy Dkt. No. 271), and (ii) the confirmation of Imagenetix's Third Amended Plan by this Court (Bankruptcy Dkt. No. 447).

FOURTH AFFIRMATIVE DEFENSE

(Laches)

31. Imagenetix is informed and believes, and based thereon alleges, that Plaintiffs' Complaint, and each alleged cause of action therein, are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

32. Imagenetix is informed and believes, and based thereon alleges, that Plaintiffs' Complaint, and each alleged cause of action therein, are barred by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

33. Imagenetix presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available, and, therefore, its reserves the right to assert additional defenses in the event that discovery indicates they would be appropriate.

WHEREFORE, Imagenetix prays for judgment as follows:

A. That Plaintiffs take nothing by way of their Complaint;

B. That Imagenetix be awarded its costs in defending the Complaint; and

C. For such other and further relief as the court deems just and proper.

Dated: September 13, 2016

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: */s/ Debra Riley*
DEBRA A. RILEY
Attorneys for Reorganized Debtor
IMAGENETIX, INC.

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 501 West Broadway, 15th Floor, San Diego, California 92101-3541.

On September 13, 2016, I served the within document(s) described as:

➢ **IMAGENETIX, INC.'S ANSWER ADVERSARY COMPLAINT**

on the interested parties in this action by:

☒ **BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"):** the foregoing document(s) will be served by the court via NEF and hyperlink to the document. On September 13, 2016, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

- Debra A. Riley - driley@allenmatkins.com, jholman@allenmatkins.com
- Derik J. Roy - droy@roy-law.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 13, 2016, at San Diego, California.

Debra A. Riley	*/s/ Debra Riley*
(Type or print name)	(Signature of Declarant)